

FINAL PRIVATE LETTER RULING

REQUEST LETTER

17-007

October 3, 2017

VIA E-MAIL

(taxplr@utah.gov)

Office of the Commission
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134

**Re: Private Letter Ruling Request for COMPANY Relating to Sales Tax and
Manufacturers Discounts**

Dear Commissioners:

Pursuant to Utah Administrative Code R861-1A-34(3), COMPANY ("COMPANY") hereby requests a private letter ruling relating to sales tax and manufacturers discounts.

COMPANY is a retailer of tangible personal property in Utah and collects sales tax on such transactions, whether the sales occur in a store or through COMPANY.com. COMPANY presently engages in many transactions where the customer presents a manufacturers coupon to COMPANY (or is otherwise aware of the discount being tied to a manufacturer), COMPANY applies the discount, and the manufacturer compensates COMPANY. In this situation, COMPANY collects and remits Utah sales tax on the reimbursed discount, and will continue to do so.

COMPANY is contemplating entering four different purchasing arrangements with vendors, into which COMPANY presently does not enter, where the vendor offers funding to COMPANY, and COMPANY sometimes passes some or all of that funding on to the customer in the form of a price discount. Sales to customers relating to these vendor transactions could occur in stores or through COMPANY.com. COMPANY wants to make sure it is applying Utah's manufacturers discount statute correctly under each of these four potential new scenarios so COMPANY collects and remits the correct amount of sales tax from customers. It is our conclusion that under all four scenarios, if COMPANY does choose to pass on the discount it receives from the vendor, COMPANY should collect and remit Utah sales tax on the actual discounted amount paid by the customer. We are requesting that you confirm our conclusion. The scenarios are as follows:

SCENARIO 1: COMPANY agrees with the vendor to sell a minimum number of the manufactured units and the vendor agrees to provide COMPANY funding on a “per unit sold” basis. COMPANY is required to use the funds “solely for promotional activities” but is not required to use the funds to reduce the selling price of the product to the customer. If COMPANY does choose to pass-through the discount to the customer, the customer is unaware that the vendor has funded the discount as the invoice does not reflect a tie between the third party and the discount, and the customer does not request the discount. An example of this type of contract is attached as Attachment 1.

SCENARIO 2: Same as Attachment 1, but no requirement to sell a minimum number of units. See Attachment 2.

SCENARIO 3: Same as Attachment 1, but no requirement to use the funds “solely for promotional activities.” See Attachment 3.

SCENARIO 4: COMPANY commits to purchase a certain number of units from the vendor in exchange for a specified per unit discount. COMPANY is not obligated to sell the product at a specified price. The vendor funding could come in various forms, but the most common method contemplated would be in the form of an offset to the payment to the manufacturer for the underlying product. Again, if COMPANY does choose to pass-through the discount to the customer, the customer is unaware that the vendor has funded the discount as the invoice does not reflect a tie between the third party and the discount, and the customer does not request the discount. See Attachment 4.

Under the relevant law, Utah imposes sales tax “on the purchase price or sales price for amounts paid or charged” for tangible personal property. Utah Code Ann. § 59-12-103(1)(a). The term “purchase price” includes “consideration a seller receives from a person other than the purchaser if . . .” (1) “the consideration . . . is directly related to a price reduction or discount on the sale . . .” (2) “the seller has an obligation to pass the price reduction or discount through to the purchaser” and (3) “the purchaser presents . . . documentation to the seller to claim a . . . discount, . . . identifies that purchaser to the seller as a member of a group . . . allowed a . . . discount, or . . . the . . . discount is identified as a third party . . . discount on the . . . invoice the purchaser receives.” *Id.* at § 59-12-102(99)(b).

Under this statute, if COMPANY discounts a price to a customer, it is our conclusion that COMPANY should collect and remit sales tax on the discounted amount paid by a customer unless (1) COMPANY receives consideration from a vendor, (2) COMPANY is obligated to pass on the amount of such consideration through a discount to the customer, and (3) the customer requests the discount or the invoice given to the customer identifies the third party discount. Where those three factors exist, COMPANY should collect and remit sale tax on the amount collected from the customer, plus the amount of the consideration provided by the vendor. Where these three factors do not exist, COMPANY should collect and remit sales tax only on the amount collected from the customer.

Applying the statute to the four scenarios, it is our conclusion that under all four scenarios, if COMPANY does choose to pass on the discount it receives from the vendor, COMPANY should collect and remit Utah sales tax on the actual discounted amount paid by the customer because COMPANY has no obligation to pass on the vendor discount, receives no request from the customer for the discount, and does not identify the third party discount on the customer invoice.

We are requesting that you confirm that our conclusion is correct. COMPANY has requested, and is requesting, similar guidance from other states. To date, STATE-1 and STATE-2 have confirmed our conclusions under their respective state laws, and no state has issued guidance rejecting our conclusion.

If you need any additional information, please let me know.

Sincerely,

Enclosures

Name-1

RESPONSE LETTER
PRIVATE LETTER RULING 17-007

April 9, 2019

Mr. NAME-1
NAME OF LAW FIRM
ADDRESS
CITY, STATE AND ZIP CODE

Dear NAME-1:

This letter is in response to your request for a private letter ruling for COMPANY (“Company”). You have asked about the correct sales price for the Company’s sales of certain units sold to its customers. For these units, the Company and the Company’s vendors enter into agreements under which the vendors provide the Company with funding for the Company’s sales and/or purchases of the units. You have presented four scenarios. For these scenarios, this private letter ruling concludes the following:

Scenarios 1, 2, and 3:	<p><i>If there is documentation that is linked to a customer’s Company membership and this documentation identifies the price reduction or discount received by the Company’s customer, as a third party reduction or discount, <i>then</i> the vendor-funded amount of that price reduction or discount is part of the sales price of the units sold to the Company’s customers.</i></p> <p><i>If the documentation that is linked to a customer’s Company membership does not identify the price reduction or discount as a third party reduction or discount, <i>then</i> the funding from the vendor to the Company is not part of the sales price of the units sold to the Company’s customers.</i></p>
Scenario 4:	<p><i>If the Billing Info. section of the agreement shows the vendor funds no part of the discount that the Company’s customers receive, <i>then</i> the funding from the vendor to the Company is not part of the sales price of the units sold to the Company’s customers.</i></p> <p><i>If the Billing Info. section of the agreement shows the vendor funds part of the discount that the Company’s</i></p>

	<p>customers receive <i>and if</i> there is documentation that is linked to a customer's Company membership and this documentation identifies the price reduction or discount received by the Company's customer, as a third party reduction or discount, <i>then</i> the vendor-funded amount of that price reduction or discount is part of the sales price of the units sold to the Company's customers.</p> <p><i>If</i> the Billing Info. section of the agreement shows the vendor funds part of the discount that the Company's customers receive <i>and if</i> the documentation that is linked to a customer's Company membership does not identify the price reduction or discount as a third party reduction or discount, <i>then</i> the funding from the vendor to the Company is not part of the sales price of the units sold to the Company's customers.</p>
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The analyses for these conclusions are found in Section III. of this private letter ruling.

I. Facts

In your request letter, you stated the following facts:

[The Company] is a retailer of tangible personal property in Utah and collects sales tax on such transactions, whether the sales occur in a store or through [Company].com. [The Company] presently engages in many transactions where the customer presents a manufacturers coupon to [the Company] (or is otherwise aware of the discount being tied to a manufacturer), [the Company] applies the discount, and the manufacturer compensates [the Company]. In this situation, [the Company] collects and remits Utah sales tax on the reimbursed discount, and will continue to do so.

[The Company] is contemplating entering four different purchasing arrangements with vendors, into which [the Company] presently does not enter, where the vendor offers funding to [the Company], and [the Company] sometimes passes some or all of that funding on to the customer in the form of a price discount. Sales to customers relating to these vendor transactions could occur in stores or through [Company].com. [The Company] wants to make sure it is applying Utah's manufacturers discount statute correctly under each of these four potential new scenarios so [the Company] collects and remits the correct amount of sales tax from customers. It is our conclusion that under all four scenarios, if [the Company] does choose to pass on the discount it receives from the vendor, [the Company] should collect and remit Utah sales tax on the actual discounted

amount paid by the customer. We are requesting that you confirm our conclusion. The scenarios are as follows:

SCENARIO 1: [The Company] agrees with the vendor to sell a minimum number of the manufactured units and the vendor agrees to provide [the Company] funding on a “per unit sold” basis. [The Company] is required to use the funds “solely for promotional activities” but is not required to use the funds to reduce the selling price of the product to the customer. If [the Company] does choose to pass-through the discount to the customer, the customer is unaware that the vendor has funded the discount as the invoice does not reflect a tie between the third party and the discount, and the customer does not request the discount. An example of this type of contract is attached as Attachment 1.

SCENARIO 2: Same as Attachment 1, but no requirement to sell a minimum number of units. See Attachment 2.

SCENARIO 3: Same as Attachment 1, but no requirement to use the funds “solely for promotional activities.” See Attachment 3.

SCENARIO 4: [The Company] commits to purchase a certain number of units from the vendor in exchange for a specified per unit discount. [The Company] is not obligated to sell the product at a specified price. The vendor funding could come in various forms, but the most common method contemplated would be in the form of an offset to the payment to the manufacturer for the underlying product. Again, if [the Company] does choose to pass-through the discount to the customer, the customer is unaware that the vendor has funded the discount as the invoice does not reflect a tie between the third party and the discount, and the customer does not request the discount. See Attachment 4.

You have stated for Scenarios 1 and 4 that “the customer is unaware that the vendor has funded the discount as the invoice does not reflect a tie between the third party and the discount.” This private letter ruling considers the possibility of the customer being aware of the vendor-funded discount through means other than the invoice.

You provided Attachments 1-4, which corresponded to Scenarios 1-4. Attachments 1-3 are titled “US VENDOR FUNDING CONTRACT.” Attachment 4 is titled “US PURCHASE DISCOUNT CONTRACT.” These attachments are further explained below.

Attachment 1 includes a shaded subsection that states the following, in part:

[The Company] commits to sell the following minimum units between start and end dates: _____. Vendor will provide funding of \$_____/unit sold, which [The Company] shall use solely for promotional activities for this item.

[The Company] may use some or all of those funds, in its sole discretion, for temporary price discounts on this item. Max TPD per Unit \$_____.

Near the top of the page, Attachment 1 includes two lines with checkboxes. On the first line, there are checkboxes for “INLINE ONLY,” “ECOM ONLY,” AND “BOTH INLINE AND ECOM.” On the second line, there are checkboxes for “Instant TPD (Temporary Price Discount)” and “Paper.” Additionally on that second line, Attachment 1 states, “Nationally advertised [Company] promotions will be visible on the [Company] Mobile App.”

Attachment 1 includes a “Billing Info” section, which states the following:

Indicate funding of discount value[:]

Vendor Fund \$_____ [Company] Fund \$_____

(Econ only) [checkbox] Temporary Price Reduction—do not deduct[.]

Attachment 1 also includes information above the Company and vendor signature lines. One statement included above the signature lines is “Members may be provided discount handouts at STORE locations.”

Attachment 2 has a shaded subsection that differs from the shaded subsection of Attachment 1. The shaded subsection of Attachment 2 states the following, in part:

Vendor will provide funding of \$_____/unit sold, which [the Company] shall use solely for promotional activities for this item. [The Company] may use some or all of those funds, in its sole discretion, for temporary price discounts on this item. Max TPD per Unit \$_____.

The other information described for Attachment 1, matches the information for Attachment 2. That matching information includes the two lines with checkboxes, the “Billing Info” section, and the statement about nationally advertised promotions.

Attachment 3 has a shaded subsection that differs from those of Attachments 1 and 2. The shaded subsection of Attachment 3 states the following, in part:

[The Company] commits to sell the following minimum units between start and end dates: _____. Max TPD per Unit \$_____.

The other information described for Attachment 1, matches the information for Attachment 3. That matching information includes the two lines with checkboxes, the “Billing Info” section, and the statement about nationally advertised promotions.

Attachment 4 has a shaded subsection that differs from those of Attachments 1, 2, and 3. The shaded subsection of Attachment 3 states the following, in part:

[The Company] commits to purchase the following minimum units: _____
By Date: __/__/__[.] The discount shall continue on all purchases above that
amount unless limited in this agreement[.] DISCOUNT VALUE/UNIT:
_____ [.]

The other information described for Attachment 1, matches the information for Attachment 4. That matching information includes the two lines with checkboxes, the “Billing Info” section, and the statement about nationally advertised promotions.

II. Applicable Law

Utah Code Annotated § 59-12-103(1) imposes tax on certain transactions, stating the following in part:

A tax is imposed on the purchaser as provided in this part on the purchase price or sales price for amounts paid or charged for the following transactions:

- (a) retail sales of tangible personal property made within the state;
....
- (l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:
 - (i) stored;
 - (ii) used; or
 - (iii) consumed;

Section 59-12-102 provides definitions that apply to the Sales and Use Tax Act. Subsection 59-12-102(99) defines “purchase price” and “sales price” as follows in part:

- (a) "Purchase price" and "sales price" mean the total amount of consideration:
 - (i) valued in money; and
 - (ii) for which tangible personal property, a product transferred electronically, or services are:
 - (A) sold;
 - (B) leased; or
 - (C) rented.
- (b) "Purchase price" and "sales price" include:
....
 - (iv) consideration a seller receives from a person other than the purchaser if:
 - (A) (I) the seller actually receives consideration from a person other than the purchaser; and

(II) the consideration described in Subsection (99)(b)(iv)(A)(I) is directly related to a price reduction or discount on the sale;

(B) the seller has an obligation to pass the price reduction or discount through to the purchaser;

(C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale to the purchaser; and

(D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the seller to claim a price reduction or discount; and

(Bb) a person other than the seller authorizes, distributes, or grants the certificate, coupon, or other documentation with the understanding that the person other than the seller will reimburse any seller to whom the certificate, coupon, or other documentation is presented;

(II) the purchaser identifies that purchaser to the seller as a member of a group or organization allowed a price reduction or discount, except that a preferred customer card that is available to any patron of a seller does not constitute membership in a group or organization allowed a price reduction or discount; or

(III) the price reduction or discount is identified as a third party price reduction or discount on the:

(Aa) invoice the purchaser receives; or

(Bb) certificate, coupon, or other documentation the purchaser presents.

....

III. Analysis

This private letter ruling addresses only the four different agreements (scenarios) you presented in your request letter for this private letter ruling. You explained that, as of October 3, 2017, the Company had not yet entered into these four different agreements. This private letter ruling reaches the following conclusions about the sales price of the Company's sales to its customers of units the Company acquires and/or sells under those four agreements:

Scenarios 1, 2, and 3:	<i>If there is documentation that is linked to a customer's Company membership and this documentation identifies the price reduction or discount received by the Company's customer, as a third party reduction or discount, <i>then</i> the vendor-funded amount of that price reduction or discount is</i>
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	<p>part of the sales price of the units sold to the Company's customers.</p> <p><i>If the documentation that is linked to a customer's Company membership does not identify the price reduction or discount as a third party reduction or discount, <i>then</i> the funding from the vendor to the Company is not part of the sales price of the units sold to the Company's customers.</i></p>
Scenario 4:	<p><i>If the Billing Info. section of the agreement shows the vendor funds no part of the discount that the Company's customers receive, <i>then</i> the funding from the vendor to the Company is not part of the sales price of the units sold to the Company's customers.</i></p> <p><i>If the Billing Info. section of the agreement shows the vendor funds part of the discount that the Company's customers receive <i>and if</i> there is documentation that is linked to a customer's Company membership and this documentation identifies the price reduction or discount received by the Company's customer, as a third party reduction or discount, <i>then</i> the vendor-funded amount of that price reduction or discount is part of the sales price of the units sold to the Company's customers.</i></p> <p><i>If the Billing Info. section of the agreement shows the vendor funds part of the discount that the Company's customers receive <i>and if</i> the documentation that is linked to a customer's Company membership does not identify the price reduction or discount as a third party reduction or discount, <i>then</i> the funding from the vendor to the Company is not part of the sales price of the units sold to the Company's customers.</i></p>

This Analysis section contains the following subsections:

- A. Subsection 59-12-102(99)(b)(iv) addresses when “consideration a seller receives from a person other than the purchaser” is part of the “sales price.”
- B. Applying the definition of sales price to Scenarios 1-3.
- C. Applying the definition of sales price to Scenario 4.
- D. Prospective enforcement is appropriate for the Company’s situation.

A. Subsection 59-12-102(99)(b)(iv) addresses when “consideration a seller receives from a person other than the purchaser” is part of the “sales price.”

Under § 59-12-103(1)(a) and (l), the Company’s sales of tangible personal property to Utah customers are subject to Utah sales and use taxes.¹ Under § 59-12-103(1), Utah sales and use taxes are calculated “on the purchase price or sales price” of those sales.

Subsection 59-12-102(99)(a) defines “purchase price” and “sales price,” in part, as “the total amount of consideration . . . valued in money . . . for which tangible personal property . . . [is] sold . . .” Subsection 59-12-102(99)(b)(iv) further explains that “‘purchase price’ and ‘sales price’ include consideration a seller receives from a person other than the purchaser if [certain conditions are met].”

The main issue presented for this private letter ruling is whether the conditions presented in § 59-12-102(99)(b)(iv) have been met. If they are met, the vendor-funded amount of the price reduction or discount is part of the sales price of the units sold to the Company’s customers. If they are not met, the funding from the vendor to the Company is not part of the sales price of the units sold to the Company’s customers.

For the conditions at issue, § 59-12-102(99)(b)(iv) states the following:

"Purchase price" and "sales price" include:

....

(iv) consideration a seller receives from a person other than the purchaser if:

- (A) (I) the seller actually receives consideration from a person other than the purchaser; and

¹ Other subsections of § 59-12-103(1) impose tax on transactions involving products transferred electronically and certain services. This private letter ruling treats the Company’s sales of units as sales of tangible personal property. If the units are products transferred electronically or services described in § 59-12-103(1) instead of being tangible personal property, Utah sales and use taxes would still apply and be similarly calculated “on the purchase price or sales price” of those items.

- (II) the consideration described in Subsection (99)(b)(iv)(A)(I) is directly related to a price reduction or discount on the sale;
- (B) the seller has an obligation to pass the price reduction or discount through to the purchaser;
- (C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale to the purchaser; and
- (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the seller to claim a price reduction or discount; and
 (Bb) a person other than the seller authorizes, distributes, or grants the certificate, coupon, or other documentation with the understanding that the person other than the seller will reimburse any seller to whom the certificate, coupon, or other documentation is presented;
- (II) the purchaser identifies that purchaser to the seller as a member of a group or organization allowed a price reduction or discount, except that a preferred customer card that is available to any patron of a seller does not constitute membership in a group or organization allowed a price reduction or discount; or
- (III) the price reduction or discount is identified as a third party price reduction or discount on the:
 - (Aa) invoice the purchaser receives; or
 - (Bb) certificate, coupon, or other documentation the purchaser presents.

Based on the language quoted above, the vendor-funded amount of that price reduction or discount is part of the sales price of the units sold to the Company's customers if Subsections (iv)(A), (iv)(B), (iv)(C), and (iv)(D) are met. These four subsections are discussed below, first, for Scenarios 1-3, and second, for Scenario 4.

B. Applying the definition of sales price to Scenarios 1-3.

The following paragraph summarizes the facts of Scenarios 1-3. The subsequent paragraphs apply § 59-12-102(99)(b)(iv)(A) through (D) to those facts.

i. Summary of the facts for Scenarios 1-3.

The agreements for Scenarios 1-3 are titled US Vendor Funding Contracts. Under these agreements, the Company's vendors provide the Company with funding on a "per unit sold"

basis. The Billing Info. section of those agreements break down the “funding of the discount value” into “Vendor Fund \$:_____” and “[Company] Fund \$:_____.” The Company and vendors enter into these agreements before the Company sells the units to its customers. The US Vendor Funding Contracts state, “Nationally advertised [Company] promotions will be visible on the [Company] Mobile App.” and “Members may be provided discount handouts at warehouse locations.” The Company’s customers present their Company membership cards to purchase the units. These membership cards are available to any patron of the Company for a price.

ii. Subsection 59-12-102(99)(b)(iv)(A) is met for Scenarios 1-3.

Subsection 59-12-102(99)(b)(iv)(A) has two sub-requirements, with § 59-12-102(99)(b)(iv)(A) stating the following:

- (I) the seller actually receives consideration from a person other than the purchaser; and
- (II) the consideration described in Subsection (99)(b)(iv)(A)(I) is directly related to a price reduction or discount on the sale;

For Scenarios 1-3, the vendors provide the Company with funding on a “per unit sold” basis, and the Billing Info. sections of the agreements show the dollar amounts of the vendor-funded discounts the Company’s customers receive. When these facts are considered together, they show that § 59-12-102(99)(b)(iv)(A)(I) is met. The Company “actually receives consideration from a person other than the [Company’s customer]”; the vendor funds the discounts according to the Billing Info. sections of the agreements. Furthermore, § 59-12-102(99)(b)(iv)(A)(II) is also met; “the [vendor funding] is directly related to a price reduction or discount on the sale” to the Company’s customers; the price reduction or discount for the vendor funding is “directly related” and found in the Billing Info. sections of the agreements.

iii. Subsection 59-12-102(99)(b)(iv)(B) is met for Scenarios 1-3.

Subsection 59-12-102(99)(b)(iv)(B) states the following:

the seller has an obligation to pass the price reduction or discount through to the purchaser;

For Scenarios 1-3, the Billing Info. sections of the agreements show the dollar amounts of the vendor-funded discounts that the Company’s customers receive. These Billing Info. sections are part of the agreements signed by the Company and the vendors. The Billing Info. sections support the conclusion that “[The Company] has an obligation to pass the price reduction or discount through to the [Company’s customers].” Thus, § 59-12-102(99)(b)(iv)(B) is met.

- iv. *Subsection 59-12-102(99)(b)(iv)(C) is met for Scenarios 1-3.*

Subsection 59-12-102(99)(b)(iv)(C) states the following:

the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale to the purchaser . . .

For Scenarios 1-3, the Billing Info. sections of the agreements show the dollar amounts of the vendor-funded discounts that the Company's customers receive. The Company and vendors complete these agreements before the Company sells the units to its customers. Thus, the "amount of consideration [, i.e. the vendor-funded discount that the Company's customers receive,] attributable to the sale is fixed and determinable by the [Company] at the time of the sale to the [Company's customer]." Therefore, § 59-12-102(99)(b)(iv)(C) is met.

- v. *For Scenarios 1-3, § 59-12-102(99)(b)(iv)(D)(I) and (II) are unmet; however, § 59-12-102(99)(b)(iv)(D)(III) could be met, depending on the "other documentation" the Company provides its customers.*

Subsection 59-12-102(99)(b)(iv)(D) contains subsections (I), (II), and (III). At least one of these three subsections must be met for the requirement of § 59-12-102(99)(b)(iv)(D) to be met. As explained below, Subsections (D)(I) and (D)(II) are unmet. However, Subsection (D)(III) could be met, depending on the facts.

Subsection (D)(I) states the following:

- (Aa) the purchaser presents a certificate, coupon, or other documentation to the seller to claim a price reduction or discount; and
- (Bb) a person other than the seller authorizes, distributes, or grants the certificate, coupon, or other documentation with the understanding that the person other than the seller will reimburse **any seller** to whom the certificate, coupon, or other documentation is presented;

(Emphasis added).

For Scenarios 1-3, Subsection (D)(I) is unmet because of Subsection (D)(I)(Bb). The paragraph directly below explains how part of Subsection (D)(I)(Bb) is met. The subsequent paragraph explained how the "any seller" language of Subsection (D)(I)(Bb) is unmet.

For Scenarios 1-3, the US Vendor Funding Contracts state, "Nationally advertised [Company] promotions will be visible on the [Company] Mobile App." and "Members may be provided discount handouts at STORE locations." These discount handouts and nationally advertised promotions are "other documentation." The "[vendors] authorize[] [this] . . . "other documentation," as required by § 59-12-102(99)(b)(iv)(D)(I)(Bb). It seems likely that the

Company and the vendors would have agreements about similar information being displayed on the Company signs, website, mailings, etc. These other sources of information can also be “other documentation” authorized by the vendor, as required by § 59-12-102(99)(b)(iv)(D)(I)(Bb). Thus, the part of § 59-12-102(99)(b)(iv)(D)(I)(Bb) about “a person other than the seller authoriz[ing] . . . other documentation” is met. However, as explained below, another part of § 59-12-102(99)(b)(iv)(D)(I)(Bb) is unmet.

For Scenarios 1-3, the vendor provides only the Company with funding on a “per unit sold” basis. The vendor enters into the US Vendor Funding Contracts with the Company only. The Billing Info. sections of the US Vendor Funding Contracts show the vendor funded discounts for sales by the Company. The US Vendor Funding Contracts do not apply to sales by other companies. Thus, the vendor does not authorize the “other documentation” discussed in the preceding paragraph “with the understanding that the [vendor] will reimburse **any seller** to whom the . . . other documentation is presented” (emphasis added), as required by § 59-12-102(99)(b)(iv)(D)(I)(Bb). Therefore, § 59-12-102(99)(b)(iv)(D)(I)(Bb) is **not** met.²

Below, Subsections (D)(II) and (D)(III) are analyzed.

Subsection (D)(II) states the following:

the purchaser identifies that purchaser to the seller as a member of a group or organization allowed a price reduction or discount, **except that a preferred customer card that is available to any patron of a seller does not constitute membership in a group or organization allowed a price reduction or discount**
...

(Emphasis added.)

The Company’s customer presents a Company membership card. That Company membership card identifies the customer as being a member of the Company; and therefore, allows a price reduction or discount. Therefore, the first part of Subsection (D)(II) seems to be met, and the exception found in Subsection (D)(II) must be considered.

Subsection (D)(II), quoted in the paragraph above, provides the following exception: “a preferred customer card that is available to any patron of a seller does not constitute membership in a group or organization allowed a price reduction or discount.” If that exception is met, then Subsection (D)(II) is unmet. The Company membership card is available to any customer of the Company for a price. The exception found in Subsection (D)(II) is met because the Company membership card “is available to any patron of [the Company],” and thus, Subsection (D)(II),

² Subsection 59-12-102(99)(b)(iv)(D)(I)(Aa) is met. “[The Company’s customer] presents . . . other documentation to the [Company] to claim the price reduction or discount,” as required by § 59-12-102(99)(b)(iv)(D)(I)(Aa). This “other documentation,” discussed previously, is linked to a customer’s Company membership and, thus, to the customer’s membership card. The customer presents his or her membership card to make his or her purchase and to receive the related price reduction or discount. Thus, § 59-12-102(99)(b)(iv)(D)(I)(Aa) is not the reason § 59-12-102(99)(b)(iv)(D)(I) is not met. Instead, as discussed in the body of the private letter ruling, the “any seller” language found in § 59-12-102(99)(b)(iv)(D)(I)(Bb) is the reason § 59-12-102(99)(b)(iv)(D)(I) is not met.

overall, is not met. The fact that a customer must pay for the Company membership card does not change the above conclusions; the exception of Subsection (D)(II) does not require the preferred customer card to be available free of charge.

Subsection (D)(III) states the following:

the price reduction or discount is identified as a third party price reduction or discount on the:

(Aa) invoice the purchaser receives; or

(Bb) certificate, coupon, or other documentation the purchaser presents.

(Emphasis added.)

Subsection (D)(III) can be met if either Subsection (D)(III)(Aa) or Subsection (D)(III)(Bb) is met. You have explained that the invoice received by the Company's customer does not show that the discount is vendor-funded. Thus, Subsection (D)(III)(Aa) is unmet. Subsection (D)(III)(Bb) is analyzed below.

Subsection (D)(III) can still be met if "the price reduction or discount is identified as a third party price reduction or discount on the . . . (Bb) certificate, coupon, or other documentation the purchaser presents." The Company's customer, who is the purchaser, presents his or her Company membership card to claim the price reduction or discount. That Company membership card likely includes basic information such as the Company's name, the Company's website, the customer's name, and the customer's member number. When the Company's customer presents his or her Company membership card, he or she is also presenting other information or "other documentation" linked to his or her Company membership. That other information or "other documentation" may include information available through the Company's website, such as information on a webpage that identifies a price reduction or discount for a sales item as being a third party price reduction or discount.³ Thus, when a customer presents his or her Company membership card, he or she may be presenting "other documentation" on which "the price reduction or discount is identified as a third party price reduction or discount." Under that scenario, Subsection (D)(III)(Bb) would be met. Alternatively, if the "other documentation" does not identify the price reduction or discount as being a third party price reduction or discount, then Subsection (D)(III)(Bb) would be unmet. Thus, whether Subsection (D)(III) is met depends on the other information or "other documentation" that is linked to a customer's membership.

vi. *Summary for Scenarios 1-3.*

For Scenarios 1-3, Subsections (A)-(C) of § 59-12-102(99)(b)(iv) are met. Additionally,

³ "Other documentation" may also include the Company's handouts, signs, mailings, etc. that similarly identify a price reduction or discount for a sales item as being a third party price reduction or discount.

if the “other documentation” that is linked to a customer’s Company membership identifies the price reduction or discount as being a third party reduction or discount, then Subsection (D)(III) is also met. If Subsection (D)(III) is met, then the vendor-funded amount of that price reduction or discount is part of the sales price of the units sold to the Company’s customers. Alternatively, if the “other documentation” does not identify the price reduction or discount as being a third party reduction or discount, then Subsection (D)(III) is not met. If Subsection (D)(III) is not met, the funding from the vendor to the Company is not part of the sales price of the units sold to the Company’s customers.

C. Applying the definition of sales price to Scenario 4.

The following two paragraphs summarize the facts of Scenario 4 and compare those facts to the facts of Scenarios 1-3. The subsequent paragraphs apply § 59-12-102(99)(b)(iv)(A) through (D) to the facts of Scenario 4.

i. Summary of the facts for Scenario 4.

Scenario 4 differs from Scenarios 1-3. The agreement for Scenario 4 is titled a US Purchase Discount Contract. The agreements for Scenarios 1-3 are titled US Vendor Funding Contracts. In Scenario 4, the vendor agrees to sell the units to the Company for a discounted price per unit, and the Company agrees to purchase a minimum number of units from the vendor at that discounted price. Thus, the US Purchase Discount Contract of Scenario 4 connects the discounted purchase price benefit to the Company’s purchases of units from the vendor. Unlike Scenario 4, the agreements for Scenarios 1-3 connect the vendor funding to the Company’s sales of the units to the Company’s customers.

Scenario 4 matches Scenarios 1-3 in the following ways. The Billing Info. section of the agreements break down the “funding of the discount value” into “Vendor Fund \$:_____” and “[Company] Fund \$:_____.” The Company and the vendors enter into the agreements before the Company sells the units to its customers. The agreements state, “Nationally advertised [Company] promotions will be visible on the [Company] Mobile App.” and “Members may be provided discount handouts at STORE locations.” The Company’s customers present their Company membership cards to purchase the units. These membership cards are available to any patron of the Company for a price.

ii. For Scenario 4, § 59-12-102(99)(b)(iv)(A) is unmet if the Billing Info. section of the agreement shows the vendor funds no part of the discount that the Company’s customers receive, and § 59-12-102(99)(b)(iv)(A) could be met if the Billing Info. section shows the vendor funds part of the discount the Company’s customers receive.

Subsection 59-12-102(99)(b)(iv)(A) has two sub-requirements, with § 59-12-102(99)(b)(iv)(A) stating the following:

- (I) the seller actually receives consideration from a person other than the purchaser; and
- (II) the consideration described in Subsection (99)(b)(iv)(A)(I) is directly related to a price reduction or discount on the sale;

For Scenario 4, the vendor is not providing the Company with funding on a “per unit sold” basis, unlike the vendors in Scenarios 1-3. Instead, the vendor in Scenario 4 is providing a discounted purchase price in exchange for the Company’s purchase of a minimum number of units from the vendor at that discounted purchase price. This discounted purchase price seems to apply only to the Company’s purchase transactions, not to the Company’s sales transactions. Thus, the discounted purchase price seems to be indirectly related to the price reduction or discount on the sales of the units to the Company’s customers. Therefore, § 59-12-102(99)(b)(iv)(A)(II) seems to be unmet based on the “directly related” language found in that subsection.

However, the above conclusion changes if the Billing Info. section of the agreement for Scenario 4 shows the vendor is funding part of the discount that the Company’s customers receive. In that situation, the vendor funding would “directly relate[] to a price reduction or discount” the Company’s customers receive, and § 59-12-102(99)(b)(iv)(A)(II) would be met.

Thus, if the Billing Info. section of the agreement shows the vendor funds no part of the discount that the Company’s customers receive, then § 59-12-102(99)(b)(iv)(A) is unmet. When § 59-12-102(99)(b)(iv)(A) is unmet, the funding from the vendor to the Company is not part of the sales price of the units sold to the Company’s customers. Instead, the funding from the vendor relates to the discounted purchase price the Company receives when the Company purchases the units from the vendor.

Alternatively, if the Billing Info. section of the agreement shows the vendor funds part of the discount that the Company’s customers receive, then § 59-12-102(99)(b)(iv)(A) is met. When § 59-12-102(99)(b)(iv)(A) is met, the funding from the vendor to the Company might be part of the sales price of the units sold to the Company’s customers. To determine whether the sales prices include the funding from the vendor, § 59-12-102(99)(b)(iv)(B), (C), and (D) must be analyzed. These analyses are found below.

- iii. For Scenario 4, § 59-12-102(99)(b)(iv)(B) is met if the Billing Info. section of the agreement shows the vendor funds part of the discount that the Company’s customers receive.*

Subsection 59-12-102(99)(b)(iv)(B) states the following:

the seller has an obligation to pass the price reduction or discount through to the purchaser;

For Scenario 4, if the Billing Info. section shows the vendor funds part of the discount the Company's customers receive, then § 59-12-102(99)(b)(iv)(B) is met because the Company "has an obligation to pass the price reduction or discount through to the [Company's customer]."

- iv. *For Scenario 4, § 59-12-102(99)(b)(iv)(C) is met if the Billing Info. section of the agreement shows the vendor funds part of the discount that the Company's customers receive.*

Subsection 59-12-102(99)(b)(iv)(C) states the following:

the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale to the purchaser . . .

For Scenario 4, if the Billing Info. section shows the vendor funds part of the discount the Company's customers receive, then § 59-12-102(99)(b)(iv)(C) is met. The Billing Info. section provides "the amount of consideration attributable to the sale" and that amount "is fixed and determinable by the [Company] at the time of the sale to the [Company's customer]."

- v. *For Scenario 4, § 59-12-102(99)(b)(iv)(D)(I) and (II) are unmet; however, § 59-12-102(99)(b)(iv)(D)(III) could be met, depending on the "other documentation" the Company provides its customers.*

Subsection 59-12-102(99)(b)(iv)(D) contains subsections (I), (II), and (III). At least one of these three subsections must be met for the requirement of § 59-12-102(99)(b)(iv)(D) to be met. As explained below, Subsections (D)(I) and (D)(II) are unmet. However, Subsection (D)(III) could be met depending on the facts.

Subsection (D)(I) states the following:

(Aa) the purchaser presents a certificate, coupon, or other documentation to the seller to claim a price reduction or discount; and

(Bb) a person other than the seller authorizes, distributes, or grants the certificate, coupon, or other documentation with the understanding that the person other than the seller will reimburse **any seller** to whom the certificate, coupon, or other documentation is presented;

(Emphasis added).

Subsection (D)(I) is unmet for Scenario 4 for the same reason as the reason for Scenarios 1-3. The vendor does not reimburse "any seller"; the vendor only potentially reimburses the Company. Thus, this area of § 59-12-102(99)(b)(iv)(D)(I)(Bb) is unmet, and Subsection (D)(I), as a whole, is unmet.

Subsection (D)(II) states the following:

the purchaser identifies that purchaser to the seller as a member of a group or organization allowed a price reduction or discount, **except that a preferred customer card that is available to any patron of a seller does not constitute membership in a group or organization allowed a price reduction or discount**
...

(Emphasis added.)

Subsection (D)(II) is unmet for Scenario 4 for the same reasons as those for Scenarios 1-3. The exception found in Subsection (D)(II) has been met; the Company membership card is available to any customer of the Company. Thus, Subsection (D)(II) is unmet.

Subsection (D)(III) states the following:

the price reduction or discount is identified as a third party price reduction or discount on the:

(Aa) invoice the purchaser receives; or

(Bb) **certificate, coupon, or other documentation the purchaser presents.**

(Emphasis added.)

The analysis for Subsection (D)(III) is the same for Scenario 4 and Scenarios 1-3. When the Company's customer presents his or her Company membership card, he or she is also presenting the other information linked to his or her Company membership. This other information is "other documentation" for purposes of Subsection (D)(III). This "other documentation" may include information available through the Company's website, handouts, signs, mailings, etc. If this "other documentation" identifies the price reduction or discount as a third party price reduction or discount, then Subsection (D)(III)(Bb) is met. If this "other documentation" does not identify the price reduction or discount as a third party price reduction or discount, then Subsection (D)(III)(Bb) is unmet. Thus, whether Subsection (D)(III) is met depends on the "other documentation" that is linked to a customer's membership.

vi. *Summary for Scenario 4.*

The conclusion for Scenario 4 depends on whether the vendor funds part of the discount the Company's customers receive and on the "other documentation" that is linked to a customer's membership.⁴

If the Billing Info. section of the agreement shows the vendor funds no part of the discount that the Company's customers receive, then § 59-12-102(99)(b)(iv)(A) is unmet. When § 59-12-102(99)(b)(iv)(A) is unmet, the funding from the vendor to the Company is not part of the sales price of the units sold to the Company's customers.

If the Billing Info. section of the agreement shows the vendor funds part of the discount that the Company's customers receive, then § 59-12-102(99)(b)(iv)(A), (B), and (C) are met. The analysis for § 59-12-102(99)(b)(iv)(D) depends on the "other documentation" that is linked to a customer's membership. That "other documentation" may include information available through the Company's website, handouts, signs, mailings, etc.

If that "other documentation" identifies the price reduction or discount received by the Company's customer, as being a third party reduction or discount, then § 59-12-102(99)(b)(iv)(A), (B), (C), and (D) are met. When § 59-12-102(99)(b)(iv) is met, the vendor-funded amount of the price reduction or discount is part of the sales price of the units sold to the Company's customers.

If that "other documentation" does not identify the price reduction or discount received by the Company's customer, as being a third party price reduction or discount, then § 59-12-102(99)(b)(iv)(D) is unmet. When § 59-12-102(99)(b)(iv)(D) is unmet, the funding from the vendor to the Company is not part of the sales price of the units sold to the Company's customers.

D. Prospective Enforcement is Appropriate for Your Situation.

Based on the facts and circumstances of your unique situation, the Commission finds that prospective enforcement for certain situations is appropriate.

This paragraph describes the facts and circumstances of your unique situation. The Company might have entered into the four types of agreements analyzed in this private letter ruling before the Company received timely guidance from the Commission through this private letter ruling. You explained that "[i]t [was your] conclusion that under all four scenarios, if [the Company] does choose to pass on the discount it receives from the vendor, [the Company] should collect and remit Utah sales tax on the actual discounted amount paid by the customer." Thus under your conclusion, the Company would not be collecting and remitting Utah sales taxes on any consideration the Company receives from a vendor for the four scenarios. Unlike your conclusion, however, this private letter ruling concludes that the Company could be

⁴ As explained in the previous paragraph, this "other documentation" may include information available through the Company's website, handouts, signs, mailings, etc.

required to collect and remit Utah sales taxes, depending on the information in the Billing Info. section of the agreements and on the information linked to a customer's Company membership. The Commission received your request letter on October 3, 2017. Prior to October 3, 2017, you had also emailed a previous version of your request letter on June 1, 2017. This private letter ruling is being issued over one year after your request letters. This delay in our response to you along with the complexity of your issue justify prospective enforcement.

If the Company entered into any of the four types of agreements after October 3, 2017, and before the date of this private letter ruling and the four types of agreements created vendor-funded price reductions or discounts that are part of the sales price of the units sold to the Company's customers, then prospective enforcement of the correct sales price is appropriate. The prospective enforcement is **limited** to the Utah sales taxes imposed on the portion of the sales price relating to the vendor funding received under any of the four types of agreements. The prospective enforcement is **further limited** to exclude those sales taxes that the Company correctly collected and remitted.⁵ Enforcement of all other areas is unaffected by this ruling. The prospective enforcement discussed in this paragraph begins 30 days after the date of this private letter ruling.

IV. Conclusion

This private letter ruling concludes the following:

Scenarios 1, 2, and 3:	<p><i>If there is documentation that is linked to a customer's Company membership and this documentation identifies the price reduction or discount received by the Company's customer, as a third party reduction or discount, <i>then</i> the vendor-funded amount of that price reduction or discount is part of the sales price of the units sold to the Company's customers.</i></p> <p><i>If the documentation that is linked to a customer's Company membership does not identify the price reduction or discount as a third party reduction or discount, <i>then</i> the funding from the vendor to the Company is not part of the sales price of the units sold to the Company's customers.</i></p>
Scenario 4:	<p><i>If the Billing Info. section of the agreement shows the vendor funds no part of the discount that the Company's customers receive, <i>then</i> the funding from the vendor to the</i></p>

⁵ While you explained that you concluded the Company should collect and remit on the actual discounted amount paid by the customer, the Company could have still collected and remitted based on a higher, correct amount. For that situation, prospective enforcement does not apply.

If the Company collected and remitted based on a higher but incorrect amount, refunds for overpayments are available as provided by the Utah Code.

	<p>Company is not part of the sales price of the units sold to the Company's customers.</p> <p><i>If the Billing Info. section of the agreement shows the vendor funds part of the discount that the Company's customers receive <i>and if</i> there is documentation that is linked to a customer's Company membership and this documentation identifies the price reduction or discount received by the Company's customer, as a third party reduction or discount, <i>then</i> the vendor-funded amount of that price reduction or discount is part of the sales price of the units sold to the Company's customers.</i></p> <p><i>If the Billing Info. section of the agreement shows the vendor funds part of the discount that the Company's customers receive <i>and if</i> the documentation that is linked to a customer's Company membership does not identify the price reduction or discount as a third party reduction or discount, <i>then</i> the funding from the vendor to the Company is not part of the sales price of the units sold to the Company's customers.</i></p>
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The Tax Commission's conclusions are based on the facts as you described them and the Utah law currently in effect. Should the facts be different or if the law were to change, a different conclusion may be warranted. If you feel we have misunderstood the facts as you have presented them, you have additional facts that may be relevant, or you have any other questions, please feel free to contact the Commission.

Additionally, you may also appeal the private letter ruling in the following two ways.

First, you may file a petition for declaratory order, which would serve to challenge the Commission's interpretation of statutory language or authority under a statute. This petition must be in written form, and submitted within thirty (30) days after the date of this private letter ruling. You may submit your petition by any of the means given below. **Failure to submit your petition within the 30-day time frame could forfeit your appeal rights and will be deemed a failure to exhaust your administrative remedies.** Declaratory orders are discussed in Utah Administrative Code R861-1A-34 C.2., available online at <http://tax.utah.gov/commission/effective/r861-01a-034.pdf>, and in Utah Administrative Code R861-1A-31, available online at <http://tax.utah.gov/commission/effective/r861-01a-031.pdf>.

Second, you may file a petition for redetermination of agency action if your private letter ruling leads to an audit assessment, a denial of a claim, or some other agency action at a division level. This petition must be written and may use form TC-738, available online at <http://tax.utah.gov/forms/current/tc-738.pdf>. Your petition must be submitted by any of the

means given below, within thirty (30) days, generally, of the date of the notice of agency action that describes the agency action you are challenging.

You may access general information about Tax Commission Appeals online at <http://tax.utah.gov/commission-office/appeals>. You may file an appeal through any of the means provided below:

- **Best way**—by email: taxappeals@utah.gov
- By mail: Tax Appeals
USTC
210 North 1950 West
Salt Lake City, UT 84134
- By fax: 801-297-3919

For the Commission,

Lawrence C. Walters
Commissioner

LCW/aln
17-007